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Communications concerning the status of women

Future work of the Working Group on Communications on the Status of Women

Report of the Secretary-General

Summary

Pursuant to decision 47/102 of the Commission on the Status of Women, the present report is based, inter alia, on preliminary discussions held at the forty-seventh session of the Commission and written views of Member States on the future work of the Working Group on Communications on the Status of Women. The report raises issues relating to the functioning of the Working Group and the communications procedure in general, and makes recommendations for the Commission on the Status of Women to consider in this regard.

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I. Introduction

1. By its decision 47/102, entitled "Communications concerning the status of women", adopted at its forty-seventh session, the Commission on the Status of Women decided to continue, at its forty-eighth session, consideration of the future work of the Working Group on Communications on the Status of Women. It requested the Secretary-General to prepare a report for this purpose, bearing in mind the preliminary discussion that had taken place at the forty-seventh session of the Commission and seeking the written views of Member States in this regard.[1] The present report is submitted pursuant to that decision.

II. Background

2. Economic and Social Council resolution 76 (V) of 5 August 1947, as amended by Economic and Social Council resolution 304 I (XI) of 14 and 17 July 1950, forms the basis for the current communications procedure of the Commission on the Status of Women. The Economic and Social Council has subsequently reaffirmed the mandate of the Commission on the Status of Women in respect of communications concerning the status of women in its resolutions 1983/27 of 26 May 1983, 1992/19 of 30 July 1992, 1993/11 of 27 July 1993 and decision 2002/235 of 24 July 2002.

3. In resolution 1983/27, the Economic and Social Council authorized the Commission on the Status of Women to appoint a working group of not more than five of its members, selected with due regard for geographical distribution, to meet in closed meeting during each of the Commission's sessions, and set down its role as follows:

(a) Consideration in closed meetings of all communications (including the replies of Governments), with a view to bringing to the Commission's attention those that appear to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women (resolution 1983/27, para. 4 (a));

(b) Preparation of a report that will indicate the categories in which communications are most frequently submitted to the Commission (resolution 1983/27, para. 4 (b)).

4. The Commission on the Status of Women was requested to examine the report submitted to it by the Working Group and to avoid duplication of the work undertaken by other organs of the Economic and Social Council. It may make recommendations to the Economic and Social Council on action the Council may wish to take in relation to the emerging trends and patterns of communications (resolution 1983/27, para. 5). It is not empowered to take other action. For most of the years since the establishment of the Working Group in 1984, the Commission has included the report of the Working Group, in full or in summarized form, in the annual session report of the Commission.[2]

5. By its decision 2002/235, the Economic and Social Council introduced the following changes to the communications procedure of the Commission on the Status of Women to make it more effective and efficient. Firstly, the Working Group on Communications on the Status of Women is to meet prior to the forty-eighth session of the Commission on the Status of Women, rather than during the session, to enable the secretariat to issue the report of the Working Group three working days

before the adoption of the agenda by the Commission. In order for the decision to be implemented as intended, the Commission should appoint, at each session, the five members of the Working Group for the next session, starting from the close of the forty-seventh session of the Commission. Secondly, the Secretary-General was requested to inform all Governments about each communication referring to them that will be included in the confidential lists that the Commission and its Working Group receive at least 12 weeks before the consideration of such communications by the Working Group, in order to give Governments sufficient time to reply to the allegations made therein. Thirdly, the Secretary-General was requested to ensure that the members of the Working Group receive the confidential material in advance, including the replies from Governments, if any, to be taken into account in preparing its report for examination by the Commission. The Secretary-General was also requested to publicize further the communications procedure.

III. Preliminary discussion at the forty-seventh session of the Commission on the Status of Women

6. During the 13th meeting, on 13 March 2003, of the Commission on the Status of Women at its forty-seventh session, a preliminary exchange of views was held on the communications procedure as proposed by the Chairperson of the Commission. He had been prompted by concerns expressed informally to him with regard to the communications procedure of the Commission and the future work of its Working Group. Delegations addressed procedural issues surrounding the debate and substantive issues concerning the mandate and working methods of the Working Group. Several delegations would have preferred that the Commission not hold such a preliminary exchange on the future work of the Working Group on Communications until the forty-eighth session in 2004, in order to be able to discuss the issue in a more organized and thorough manner.

7. Many delegations highlighted the importance of the communications procedure. However, some felt that the procedure had experienced significant difficulties and did not meet the ultimate goal of a communications procedure, namely, to propose solutions to specific situations of women, in order to live up to the expectations of authors that a remedy would be provided in cases of injustice or discrimination against women.

8. Some delegations were of the view that the preliminary discussion lacked a clear focus. One representative considered that the thrust of the issue was whether the Commission on the Status of Women should continue to deal with information from the confidential 1503 procedure, when this practice lacked a legal basis and distracted the Commission from its work. Another delegation added that this issue had several dimensions, namely the overlap with the work of other intergovernmental bodies; confidentiality of information; and optimal usage of available resources. One delegation suggested that the respective mandates of the Working Group and the Commission, as laid down in Council resolutions, should be the parameter for any discussion.

9. At the 13th meeting, on 13 March, Argentina, also on behalf of Chile, Croatia and the Netherlands, introduced draft resolution E/CN.6/2003/L.8, in which the Secretary-General was requested to prepare a report on the various types of existing machinery, communications mechanisms and procedures within the United Nations

system that dealt with the status of women and would analyse the number, type, subject matter and source of communications received, give an explanation of the mandate, power and authority and scope of each mechanism and identify the type of communications that could not be addressed by existing mechanisms. The report should also cover the issue of channelling communications received by the Division for the Advancement of Women of the Department of Economic and Social Affairs to other United Nations mechanisms and procedures capable of addressing these communications effectively. While several subsequent speakers welcomed or were not opposed to such a report, others preferred to wait until the next session before possibly requesting a report of the Secretary-General.

10. At the 14th meeting, on 14 March, the Commission had before it amendments to E/CN.6/2003/L.8, which had been submitted by Egypt, also on behalf of China, Cuba, India, Indonesia, the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia and the Sudan (E/CN.6/2003/L.9), and which, inter alia, would delete the request for a report. Both E/CN.6/2003/L.8 and E/CN.6/2003/L.9 were withdrawn after the adoption of Commission decision 47/102.

IV. Written views submitted by Member States

11. As at 12 December 2003, replies had been received from 12 Governments.[3]

12. Argentina reiterated its support for the continued transmission of the full texts of confidential and non-confidential communications from the Commission on Human Rights to the Commission on the Status of Women. It had traditionally favoured the unrestricted circulation of communications among organs of the United Nations system.

13. Argentina favoured diversifying and increasing the sources of information available to the Working Group. In order to enable the Working Group to fulfil its mandate to identify general trends and formulate policies and strategies that contributed to the advancement of women, Argentina considered that it would be useful for the Working Group to receive relevant information from the human rights special mechanisms and treaty monitoring bodies concerning violations of women's human rights.

14. Burkina Faso wished to be informed of the experience gained over the past five years with regard to the communication mechanisms in the United Nations system in dealing with violations of the fundamental rights of women. In particular, Burkina Faso thought that it would be useful if the mandates, powers and functions were specified so that the Commission could explore the means by which communications could be transmitted to other mechanisms for effective follow-up.

15. Burkina Faso was of the view that the Commission should focus on the follow-up to and the implementation of the Beijing Platform for Action and the outcome of the twenty-third special session of the General Assembly and on improving the study of the situation of women in the world. It hoped that communications would be used as sources of information to record trends and practices regarding the violation of the fundamental rights of women to assist the Commission in formulating policies and strategies for the advancement of women and believed that the objectives of the procedure needed to be widely disseminated in view of the fact

that individuals and non-governmental organizations appeared to disregard or not understand them.

16. Canada pointed out that, as part of its mandate, the Commission prepared recommendations and reports to the Economic and Social Council on promoting women's rights in the political, economic, civil, social and educational fields. The Commission also made recommendations to the Council on urgent problems and emerging trends in the field of women's rights requiring immediate attention. The communications procedure was intended to contribute to the ability of the Commission on the Status of Women to make recommendations on policy to the Economic and Social Council.

17. Canada stated that the Secretary-General was clearly mandated to submit to the Commission on the Status of Women at each session a report on confidential and non-confidential communications on the status of women, as well as a list of communications received by the specialized agencies, regional commissions and other United Nations bodies, together with information on action that may have been taken following the receipt of such communications. The Secretary-General was also requested to ensure proper coordination of the activities of the Commission on the Status of Women in this area, as well as those of the other bodies of the Council.

18. Canada believed that the review of the future work of the Working Group should be founded on a consideration of the mandate of the Commission on the Status of Women and, specifically, should ensure that the communication procedure was able to fulfil its designated role in achieving this mandate. In addition, options for reform of the communication procedure of the Commission on the Status of Women should be examined from a perspective based on the following concerns: (a) any modifications should lead to an improvement in the promotion and protection of women's human rights and the elimination of gender discrimination; (b) the review should promote more effective use of information derived from this process to identify key trends and emerging issues related to women's human rights and gender equality and lead to the development of concrete actions to address these situations; (c) the review should promote more effective use of the procedure and of the specialized expertise of the Commission on the Status of Women to address individual communications on which no action was being taken by another body; and (d) efforts to raise awareness of the Commission on the Status of Women communications procedure should be enhanced.

19. Canada stated that it was clear from the mandate that the Commission on the Status of Women was to receive lists of all communications submitted to the United Nations relating to the status of women. The Secretary-General was requested to ensure coordination between the bodies of the Economic and Social Council by providing information on the actions other bodies took to respond to communications. Consideration of a communication under the Commission on the Status of Women procedure did not result in duplication even where a communication was being considered by another body, because the Commission on the Status of Women considered communications for different purposes than other bodies and was not empowered to provide a remedy for violations of human rights, as other bodies may be. Therefore, no duplication in consideration of individual communications should arise. This was why the Economic and Social Council had mandated the Secretary-General to provide lists of all communications relating to the status of women to the Commission on the Status of Women.

20. In addition, Canada identified two issues that needed to be addressed. The first was the advantage of providing more communications relating to the status of women to the Commission on the Status of Women for the identification of emerging trends and patterns. In this regard, efforts to raise awareness about the communications procedure of the Commission on the Status of Women should be enhanced to encourage the submission of more communications. In addition, the Secretariat should ensure that the Commission on the Status of Women was provided with lists of all relevant communications submitted to other United Nations bodies, as mandated by the Economic and Social Council. The procedure should ensure effective use of the information produced by the Working Group to enhance the ability of the Commission on the Status of Women to develop and recommend policy advice to promote women's human rights and gender equality. Although the Commission on the Status of Women was mandated to make recommendations to the Economic and Social Council with respect to the report of the Working Group on Communications, this had rarely been manifested in practice. Canada favoured giving the Working Group the mandate to make recommendations regarding emerging trends and patterns to the Commission on the Status of Women for action, rather than to the Economic and Social Council. The Working Group should be mandated to make recommendations on country-specific and thematic issues of concern to women's human rights and gender equality. Examples of such action could include a proposal that the Secretariat or an independent body, such as a special rapporteur, further examine an issue or trend identified in the report of the Working Group and make recommendations for the Commission on the Status of Women to consider. In particular, special rapporteurs could prove useful in conducting further examinations of issues where the available information was insufficient and where further investigation might be warranted to identify a consistent pattern of reliably attested violations. Any mechanism should have a clearly articulated mandate and should avoid duplication or overlap with other parts of the United Nations system.

21. The other issue identified by Canada as warranting attention was the fact that the procedure of the Commission on the Status of Women was ineffective in providing a remedy. This applied in cases where the Commission on the Status of Women was the only body that was considering a particular communication relating to the status of women or when no action was being taken by another body. The report of the Secretary-General (E/CN.6/2001/12) acknowledged that a significant number of communications involved individual grievances and explained that the current procedure failed to meet public expectations that it could adequately respond to or redress such grievances.

22. Canada supported expanding the mandate of the Commission on the Status of Women to provide, in addition to its other mandates, a mechanism for the consideration of individual communications relating to the status of women or gender discrimination that appeared to reveal a gross and reliably attested violation of human rights and which had not been considered by other bodies. While the primary criteria for consideration of a communication should be gender discrimination, the compounding and intersecting effects of other factors, such as race, culture and ethnicity, also had to be recognized. The intersection of these factors should be taken into account in the analysis of any communication considered by the Working Group. While the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women established an

individual complaints mechanism, it was limited in application to States parties. The existing Working Group and procedure could fulfil this additional mandate, with the authority to provide non-binding recommendations to the Commission on the Status of Women for action. In order to avoid duplication, the Secretariat would be empowered to forward for consideration under this mandate only communications that had not been considered by other bodies. The Secretariat would also be empowered to allocate communications to the most appropriate body and only communications relevant to the mandate of the Commission on the Status of Women would be provided to it. Communications primarily involving a violation of human rights, which would normally be dealt with by another special mechanism with relevant expertise, such as on torture, would continue to be considered by that mechanism (e.g. the Special Rapporteur of the Commission on Human Rights on the question of torture). Such a communication would only be provided to the Commission on the Status of Women, as was the current practice, for the purposes of identifying emerging trends and patterns and making general recommendations, and not for the purpose of providing an individual remedy.

23. China stated that the current priorities of the Commission should be the continued promotion of the implementation by all States of the Beijing Declaration and Platform for Action,[4] as well as of the outcome of the twenty-third special session of the General Assembly,[5] and the enhancement of research into women's status and development trends. As a key organ of the United Nations system for the consideration of women's issues, the Commission on the Status of Women should concentrate its efforts on major issues related to the advancement of women.

24. To China, the Commission's mechanism for the consideration of communications stood as a crucial component of its work, the purpose of which was to serve as a channel through which the Commission learned about issues and trends in the global women's movement, and to provide a reservoir of information for the Commission to draw upon in the development of relevant development policies and strategies. Such a mechanism must function in conformity with the overall objectives of the Commission, while relevant communications should continue to be considered in accordance with the Commission's mandate as defined by the Economic and Social Council. In the future, this mechanism should seek to avoid duplicating the work carried out by other United Nations bodies, improve its efficiency and emphasize objectivity, so as to do a better job in terms of providing information for the Commission's reference in decision-making.

25. The United Nations was currently in the process of reform, with a view to improving efficiency and reducing expenditure. China felt that the Working Group should adopt the same objectives for its own reform. To this end, it should tap into the resources and potentials of existing mechanisms, emphasize results and avoid duplication. It should endeavour to update the mechanism for the consideration of communications in accordance with the goals of the Commission and the relevant principles of the General Assembly and do its utmost to prevent politicization and confrontational practices.

26. Egypt stated that efforts should be concentrated on improving the Working Group's methods so as to stop the practice of referring complaints to it under the confidential 1503 procedure, as this was not based on any legal provision.

27. Egypt considered there should be no expansion of the mandate of the Working Group. The communications procedure provided a source of information for

monitoring the pattern of violations in various regions of the world without referring explicitly to States. The Working Group should be granted additional time to examine the complaints submitted before the opening of the annual session of the Commission on the Status of Women.

28. Egypt considered that efforts should be concentrated on improving the working methods of the Division for the Advancement of Women, with a view to raising awareness of its activities as a body receiving complaints relating to women, instead of receiving complaints that had already been submitted and processed within the framework of other mechanisms. Efforts should be made to ensure the full utilization of available resources and optimal use of existing mechanisms and to promote further coordination between the Commission on the Status of Women and the Office of the United Nations High Commissioner for Human Rights, in order to avoid duplication, inconsistency and additional costs.

29. Jamaica and Lebanon supported the decision to continue consideration of the future work of the Working Group.

30. For the purpose of considering the future of the Working Group of the Commission on the Status of Women, Malaysia stated that it had studied the last 10 reports of the Working Group as a reference.

31. What was most obvious to Malaysia was that the Working Group did not or had not been able to fulfil its mandate, as contained in operative paragraph 4 (a) of Economic and Social Council resolution 1983/27, in that it had not brought to the attention of the Commission on the Status of Women any communication which revealed a consistent pattern of reliably attested injustice and discriminatory practices against women. The Working Group had limited itself to fulfilling its second function — to prepare a report indicating categories of communications most frequently received by the Commission on the Status of Women. With the exception of the report of the forty-seventh session of the Commission on the Status of Women, Malaysia noticed that reports "took note of" or "expressed concern" about the various communications received by the Commission on the Status of Women, rather than indicate the clear categories in which communications were received.

32. Malaysia thought that one possible reason the Working Group had not been able to fulfil its mandate was that the Commission on the Status of Women had not received any communications that fulfilled the admissibility criteria of revealing a consistent pattern of reliably attested injustice and discriminatory practices against women. In the report of the Working Group to the Commission on the Status of Women at its forty-seventh session (E/CN.6/2003/CRP.6), it was stated that, due to the limited number of communications received, it had not been possible to assess whether a consistent pattern of reliably attested injustice and discriminatory practices against women existed.

33. Malaysia identified a number of weaknesses in the communications procedure. First, any report of the Working Group could do no more than indicate categories of allegations, as the Commission on the Status of Women had no investigative powers to prove them true or false. In preambular paragraph 2 of its resolution 76 (V), the Economic and Social Council recognized that the Commission on the Status of Women had no power to take any action in regard to any complaints received concerning the status of women. Malaysia thought that indicating categories in which allegations were made and which the Working Group itself was not in a

position to investigate made for limited use, if any. The Commission on the Status of Women was supposed to examine such reports and make recommendations to the Economic and Social Council. Malaysia viewed this as untenable and unacceptable, because recommendations should be based on solid and reliable facts or allegations that had been proven to be true.

34. Malaysia further pointed out that when, 20 years ago, the Economic and Social Council, in resolution 1983/27, recognized the desirability of strengthening the capacity of the Commission on the Status of Women to deal with communications, the volume had increased substantially. Recent figures indicated a downward trend and therefore did not continue to support the contention. Decreasing numbers did not necessarily indicate decreasing numbers of violations. Instead, the decrease might be owing to: (a) a general feeling of frustration due to the ineffectual nature of the procedure, in that it did not provide an avenue for redress; and (b) an increase in the number of mechanisms that fulfilled similar functions in a more effective manner. Aside from the 1503 procedure, the Human Rights Committee, under the Optional Protocol to the Covenant on Civil and Political Rights, the Committee against Torture, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee on the Elimination of Racial Discrimination, under article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, and the Committee on the Elimination of Discrimination against Women, under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, had communications procedures with the mandate and competence to address individual complaints.

35. Furthermore, Malaysia felt that the time frame given (one year) was insufficient to discern trends (10 years would be tenable and five workable, in order not to be ineffectual and inaccurate) and that the members of the Working Group, who were appointed at each session of the Commission on the Status of Women, lost an element of continuity. Such a study, which was academic in nature, could not be satisfactorily carried out by an ad hoc group of experts. It would be better handled by an individual or group appointed specifically for and dedicated to the study of the matter, so that an accurate finding could be made.

36. Malaysia drew attention to operative paragraph 5 of Economic and Social Council resolution 1983/27 in which the Council had requested the Commission on the Status of Women to avoid duplication of work undertaken by other organs of the Economic and Social Council. In that connection, Malaysia pointed out that the 1503 procedure was not limited to either gender and, as such, may include violations of women's human rights. While the mandates of the two procedures varied, the fact remained that the secretariat of the Commission on Human Rights had been transmitting communications with allegations of violations of the human rights of women and girls to the Division for the Advancement of Women (the secretariat of the Commission on the Status of Women) to be given to the Working Group. While Malaysia vehemently objected to such transmittal, which it saw as a violation of the confidential nature of the 1503 procedure, the action of "sharing" itself demonstrated that there was some overlap in the work of the two procedures. Malaysia considered that it would be more useful and more accurate for the Commission on the Status of Women to refer to communications that had been conclusively considered under the 1503 procedure (i.e. where allegations had been proven to be true). Such information could subsequently be used as data in

discerning a trend or pattern in the violation of the human rights of women and girls. The 1503 procedure had extensive and exhaustive procedures for dealing with confidential communications, including strict admissibility criteria. It had investigative powers mandated by the Economic and Social Council and power to take action on those communications. The Working Group of the Commission on the Status of Women did not. The fact that separate bodies considered the same allegations and may have reached different conclusions contravened the most basic legal precept, namely, that a person cannot be tried twice for the same offence. States should not be put in a similar position. Furthermore, Malaysia stated that replies from the 1503 procedure were not shared, which, in turn, led to erroneous conclusions by the Working Group of the Commission on the Status of Women.

37. Malaysia was concerned about the breach of confidentiality that sharing 1503 communications involved and felt that compromising the confidentiality of the 1503 procedure might lead to a deterioration in the cooperation of Member States in both procedures.

38. Malaysia noted that most reports of the Working Group either hinted or specifically stated that the communications procedure of the Commission on the Status of Women was ineffective; some had noted the need to strengthen it. However, were the communications procedure of the Commission on the Status of Women to be strengthened, it would certainly lead to duplication of other procedures, not least the 1503 procedure. Malaysia believed that, not only was such duplication unnecessary and should be avoided, but that there was also the danger that it would lead to the undoing of the mainstreaming of a gender perspective throughout all processes of the United Nations.

39. Malaysia considered that the communications procedure, if ever it had served a purpose, no longer did so effectively and, in this regard, recommended that the Commission on the Status of Women eliminate this aspect of its work. It also recommended that the Economic and Social Council adopt a decision to this effect.

40. The Russian Federation stated that the current practice whereby communications received under the 1503 procedure were transmitted by the Office of the United Nations High Commissioner for Human Rights to the Division for the Advancement of Women at the Secretariat in New York was not provided for in resolutions of the General Assembly, nor of the Economic and Social Council. As a result, the practice had no legal basis. Accordingly, the communications should not be examined by the Working Group on Communications established by the Commission on the Status of Women.

41. Moreover, the Russian Federation felt that the practice of sharing communications caused unwarranted duplication of effort between the Commission on Human Rights and the Commission on the Status of Women and went against paragraph 5 of Economic and Social Council resolution 1983/27, in which the Council had requested the Commission on the Status of Women to examine the report of the working group and to avoid duplication of the work undertaken by other organs of the Economic and Social Council. In addition, it broke the rule that communications should be examined only once by the most appropriate organ or procedure.

42. The Russian Federation considered that, until the General Assembly or the Economic and Social Council had taken an appropriate decision, the practice of

sharing communications should stop, and the Working Group on Communications should only examine communications sent directly to the Commission on the Status of Women.

43. The Sudan stated that the mandate of the Working Group and its methods of work should be maintained in accordance with Economic and Social Council resolution 1983/27, and that it should be confirmed that the purpose of the complaints procedure of the Commission on the Status of Women was fundamentally to provide a source of information for monitoring the pattern of violations in various regions of the world without identifying any State or States in particular, or singling out any form or forms of violations.

44. The Sudan believed that the mandate and methods of work of the Working Group should not be extended and that there should be discussion as to whether it was worth continuing with the complaints procedure of the Commission on the Status of Women, given the existence of the 1503 procedure of the Commission on Human Rights, which was regarded as being more effective and comprehensive.

45. The Sudan wished to underline that there should be no conflict nor duplication in handling complaints involving women, as existed between the Commission on the Status of Women and its Working Group on complaints and other mechanisms. Compliance with the principles of the current procedures of the Commission on the Status of Women should be emphasized, particularly those relating to the review and consideration of the report of the Working Group before it was adopted by the Commission.

46. The Sudan also stated that the working methods of the Division for the Advancement of Women should be improved with respect to the handling of communications and complaints concerning the status of women and the transmittal to the Governments concerned of information relating to such communications and complaints.

47. While Thailand recommended that the future work of the Working Group should avoid duplication of the work of existing United Nations mechanisms, it had no objection to the improvement of the future work of the Working Group.

48. The United Republic of Tanzania recognized the usefulness of the Working Group in identifying trends in the realm of discrimination against women and therefore believed that it had a role to play. The terms of reference and the type of mandate that the Working Group was given needed to be looked at.

V. Issues relating to the work of the Working Group and recommendations

49. The following sections and recommendations raise issues relating to the functioning of the communications procedure of the Commission on the Status of Women, and, in particular, the work of the Working Group on Communications on the Status of Women.

A. Criteria for inclusion of communications in the lists of communications submitted to the Commission on the Status of Women

50. Over the years the issue of which criteria to apply when determining whether or not to process a communication under the communications procedure of the Commission on the Status of Women has been raised. For example, in 1984, the Working Group considered that the issue of separation of families and of persons wishing to marry fell beyond the scope of the procedure, insofar as they did not relate specifically to women only, but rather, applied equally to men and women.[6] In its reports for 1997, 1998 and 1999,[7] the Working Group expressed the opinion that the content of a communication should refer only to women and women's issues that were identified as injustice or discriminatory acts or practices against women. Specific criteria, however, have not been adopted.

51. **The Commission may want to consider elaborating criteria for the selection of communications for its communications procedure that would ensure that communications that clearly fall outside the scope of the procedure would be screened out. The criteria could apply to communications received directly from individuals or organizations, communications from the 1503 procedure's monthly confidential lists of communications, communications received from specialized agencies, regional commissions and other United Nations bodies and possibly from other sources (see para. 55 below). On the selection process itself, see paragraphs 58 and 65 below.**

B. The volume of communications included in the lists of communications submitted to the Commission on the Status of Women

52. During the last session of the Commission on the Status of Women in 2003, the Working Group on Communications on the Status of Women identified the limited number of communications received (22) as an impediment to carrying out its mandate.[8] Similarly, in 1992, the Working Group considered that five communications did not enable it to identify trends that revealed a consistent pattern of reliably attested injustice and discriminatory practices against women.[9]

53. The number of communications submitted to the Commission on the Status of Women in confidential reports since the 1991 report of the Secretary-General (E/CN.6/1991/10) is shown in the table below:

Confidential communications submitted to the Commission on the Status of Women since 1991[a]

Year	*Received by the Division for the Advancement of Women*	*From the "1503" lists*	*Total*
1992	4	1	5
1993	5	21	26
1994	4	18	22
1995	10	25	35
1996	3	16	19
1997	10	41	51
1998	9	27	36
1999	9	83	92
2000	25	44	69
2001	14	22	36
2002	6	17	23
2003	7	15	22
Total	**106**	**330**	**436**

[a] Each number represents an item in the confidential list. However, one item may summarize tens, hundreds or thousands of letters referring to similar situations in various countries (so-called "mass campaigns").

54. **The Commission may want to consider the question of increasing the volume of communications, by expanding the sources of communications, for potential consideration and decision by the Working Group as to which communications and replies thereto should be brought to the attention of the Commission. In addition to currently used sources (see para. 55 below), communications from thematic or country mechanisms of the Commission on Human Rights, communications from human rights treaty bodies or other United Nations bodies could be considered, and communications from specialized agencies and regional commissions could also be again solicited.**

C. Sources of communications received and their selection

55. In the report of the Secretary-General (E/CN.6/1991/10) submitted to the Commission on the Status of Women at its thirty-fifth session in 1991, it was indicated that communications that were submitted to the Commission on the Status of Women under its communications procedure were received from:

(a) Individuals or non-governmental organizations who corresponded directly with the Division for the Advancement of Women;

(b) Monthly confidential lists prepared by the (then) Centre for Human Rights under the 1503 procedure;

(c) Specialized agencies, regional commissions or other United Nations bodies through the Division for the Advancement of Women.[10]

56. Virtually all the communications that the Division has processed for the Commission on the Status of Women since the adoption of Economic and Social Council resolution 1983/27 fall into the first two categories. The last time that any information from the specialized agencies, regional commissions or other United Nations bodies was included in the confidential lists of communications concerning the status of women was in 1994.[11] The submission came from the Centre against Apartheid, which reported on the activities of the Special Committee against Apartheid in observance of the International Day of Solidarity with the Struggle of Women in South Africa on 9 August 1993. The selection of communications for inclusion in the confidential lists is undertaken by the Commission's secretariat, the Division for the Advancement of Women.

57. **The Commission may want to consider specifying the sources from which it wishes to receive communications. The Commission may also wish to specify which mechanisms and bodies should be invited to supply information to the communications procedure, as well as the type of information sought (i.e. public/confidential reports, summaries, Government replies, action taken, etc.).**

58. **The Commission may also want to consider the question of the process for selecting communications for inclusion in the lists of communications, whether the selection should continue to be carried out by the Division for the Advancement of Women, or whether it would be desirable to involve the Working Group or a designated member of the Working Group (see also the recommendation in para. 66).**

59. **The Commission may further want to consider whether those who are designated to select communications should also have the mandate to submit questions to the authors of communications and the Governments concerned to request further information or clarification, as may be necessary.**

1503 material as a source of communications

60. Authorization of the practice of sharing confidential material between the confidential communications procedures of the Commission on the Status of Women and the Commission on Human Rights has been debated in recent years in both Commissions, as well as in the Economic and Social Council. The practice has been in operation since 1949. In accordance with Economic and Social Council resolution 76 (V), the Secretary-General prepared a confidential list of communications concerning the status of women (received by the United Nations from 15 December 1947 to 19 January 1949) for the third session of the Commission on the Status of Women, in which he stated:

> "Communications in this list which also relate to human rights and to the prevention of discrimination and the protection of minorities, have already been included, or will be included, in the lists of communications submitted to the Commission on Human Rights and the Subcommission on the Prevention of Discrimination and Protection of Minorities in accordance with resolutions 75 (V) and 116 A (VI) of the Economic and Social Council."[12]

61. In document E/CN.6/602 dated 8 July 1976, the following description was given of the procedure for handling communications concerning the status of women since the adoption of Council resolution 728 F (XXVIII) of 30 July 1959:

"(a) From all communications alleging violations of human rights, including those concerning the status of women, received by the Secretary-General, which are compiled into lists and presented to the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities in accordance with Council resolution 728 F (XXVIII), the Secretary-General selects those which are concerned with the status of women and prepares two lists for consideration by the Commission on the Status of Women: a non-confidential list containing a brief indication of the substance of communications dealing with principles relating to the promotion of women's rights and a confidential list indicating the substance of other communications concerning the status of women;

"(b) In the Commission on the Status of Women, the practice has been for both lists of communications to be considered together in closed meetings. An ad hoc committee is set up during the session to review these lists, as suggested in Council resolution 76 (V).[6] The criterion applied has been possible violation of the Declaration on the Elimination of Discrimination against Women;

"(c) The Commission on the Status of Women merely takes note of the communications. It has no power to take any action in regard to any complaints."[13]

"[6] This was the practice until the twenty-second session of the Commission."

62. From 1982, a separate category of communications, entitled "A. Confidential communications concerning the violation of women's rights received by the Branch for the Advancement of Women, 1980-1981"[14] appeared systematically in the confidential lists of communications prepared for the Commission on the Status of Women. This suggests that, before 1980, no communications had been submitted to the Commission on the Status of Women without also being submitted to the Commission on Human Rights and the (then) Subcommission on the Prevention of Discrimination and Protection of Minorities. Furthermore, in the Confidential List No. 19 that was prepared for the twenty-eighth session of the Commission on the Status of Women, when referring to the series of documents (confidential lists of communications and replies from Governments) prepared for the 1503 procedure, it was stated:

"These documents, which are published monthly in accordance with paragraph 2 (e) and (f) of resolution 728 F (XXXVIII) and paragraph 4 (a) of resolution 1503 (XLVIII) of the Economic and Social Council, provided the essential source (for the period 1947-1980) for drawing up the confidential lists relating to the status of women."[15]

63. In paragraph 41 of the 2001 report of the Secretary-General (E/CN.6/2001/12) the question was taken up as to whether there was authorization for the 1503 secretariat to share summaries and details of 1503 communications with the Division for the Advancement of Women, to be dealt with under the communications procedure of the Commission, or whether it involved a breach of the confidentiality mandated by the 1503 procedure. That report found that the question was "not free from doubt" (ibid., para. 40) and that "the relationship between the various resolutions is not clear" (ibid., para. 41) and suggested that "the

Commission may wish to recommend that the Council take the opportunity to clarify matters as part of any changes it may make to the procedure of the Commission on the Status of Women" (ibid.).

64. The issue of authorization for the sharing of confidential 1503 material was analysed in a legal opinion. Another view was put forward in footnote 9 of the 2002 report of the Secretary-General (E/CN.6/2002/12), which read:

> "[9] In response to a request for advice on this practice, the Office of Legal Affairs of the United Nations Secretariat indicated that, in its view:
>
> "The practice ... is anticipated by a number of resolutions of the Economic and Social Council. In particular, Economic and Social Council resolution 1983/27, entitled 'Communications concerning the status of women', anticipates that both confidential and non-confidential communications on the status of women will be forwarded to the Commission on the Status of Women from other United Nations bodies. In paragraph 2 of that resolution, the Council requests the Secretary-General to submit to the Commission 'a report on confidential and non-confidential communications on the status of women, which shall include ... communications received by the specialized agencies, regional commissions and other United Nations bodies, together with information on action that may have been taken following the receipt of such communications'.
>
> "Further, in section I, entitled 'Communications concerning the Status of Women', of its resolution 304 (XI) entitled 'Report of the Commission on the Status of Women (fourth session)', the Economic and Social Council decided, inter alia, to amend paragraph (b) of Council resolution 76 (V), which provided the procedure with regard to confidential communications for the Commission on the Status of Women. This was amended so that confidential communications, *however addressed* (emphasis added), might be included in information to be provided to members of the Commission. As such, the current practice of sharing confidential communications between the Commission on Human Rights and the Commission on the Status of Women is not only acceptable but, in light of the above resolutions, to be expected."[16]

65. The most recent development occurred on 24 July 2003, when the Economic and Social Council adopted resolution 2003/58, entitled "Enhancement of the functioning of the Office of the United Nations High Commissioner for Human Rights in regard to the operation of the mechanisms of the Commission on Human Rights", in which the Council decided to postpone any decision on the transmission of communications and their contents between the functional commissions of the Economic and Social Council until the Commission on the Status of Women concluded its consideration of the present report and, in the meantime, to continue with present practice, as set out, notably in its resolution 1983/27 of 26 May 1983. The Council also overrode Commission on Human Rights decision 2003/113 of 25 April 2003. That decision had called for a discontinuation of the practice of transmitting ex officio monthly lists of communications and their contents to other organs and bodies of the United Nations system, regardless of the nature or characteristics of those communications, unless express authorization to this effect had been granted by the Commission and the Economic and Social Council.

66. **The Commission on the Status of Women might want to consider the selection process vis-à-vis 1503 communications. It may be useful to draft criteria for selection (see also para. 50 above), including, for example, whether communications may be selected when they are still under consideration by the Working Group on Communications of the Subcommission, the Working Group on Situations or the Commission on Human Rights. The Commission on**

the Status of Women may also want to consider whether the selection should continue to be carried out by the Division for the Advancement of Women. Other possible options are that the Division make the selection together with a member of the Working Group on Communications on the Status of Women, or that the Working Group on Communications of the Subcommission make the selection of communications and replies to be forwarded to the Commission on the Status of Women and its Working Group on Communications.

D. Continuity: term of membership in the Working Group

67. In 1997, the Working Group recommended two-year terms for its members in order to provide continuity in the review of communications.[17]

68. **The Commission may want to consider extending the term of members of the Working Group on Communications on the Status of Women to two or more years and stagger the nominations to enable them to gain in experience and develop expertise in the procedure. This would also provide a degree of continuity in the consideration of communications.**

Notes

[1] At its substantive session of 2003, the Economic and Social Council, in its decision 2003/237, entitled "Report of the Commission on the Status of Women on its forty-seventh session and provisional agenda for the forty-eighth session of the Commission", took note of the report of the Commission on the Status of Women on its forty-seventh session, which included Commission decision 47/102.

[2] A legal opinion was requested on whether the Commission's decision to include the report of the Working Group in the report of the Commission was within its mandate and whether that decision violated the confidentiality of the procedure. Document E/CN.6/1992/CRP.3 contained the requested opinion. The Office of Legal Affairs was of the view that the Commission was competent to decide to include in its report to the Economic and Social Council the text of the report of the Working Group on Communications on the Status of Women. The relevant portion of the opinion read:

> "7. ... If the Commission were to interpret an Economic and Social Council resolution in a manner not consistent with the intention of the parent organ, the Economic and Social Council would presumably inform the Commission of the proper intent and interpretation. Recent reports of the Commission reveal that for a number of years the Commission has included in its reports to the Economic and Social Council summaries of debates held in the Working Group and, on several occasions, the text of the report adopted by the Working Group. As we understand it, on no occasion did the Economic and Social Council indicate to the Commission that such inclusion of summaries or reports violated the letter or spirit of its resolution 1983/27.
>
> "8. ... The above practice is not objectionable from the legal point of view, given the text of the provision in question. Paragraph 6 of the resolution states that what is to remain confidential is not the reports of the Working Group or its discussions, but rather 'actions envisaged in the implementation of the present resolution'. The actions envisaged in the resolution include the following: a) consideration by the Working Group of all communications with a view to bringing to the attention of the Commission those communications which appear to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women (para. 4 (a)); b) Preparation of a report by the Working Group indicating the categories in which communications are most frequently submitted women (para. 4 (b)); c) Commission recommendations to the Economic and Social

Council, which is then to decide what action may appropriately be taken on the emerging trends and patterns of communications.

"9. The above-mentioned 'actions' relate to emerging trends and patterns of communications and conclusions regarding consistent patterns of reliably attested injustice and discriminatory practices against women; organizational matters or conclusions with regard to the procedure for communications, including those aimed at improving such procedure, are not explicitly deemed 'actions' under the resolution."

[3] Replies were received from Argentina, Burkina Faso, Canada, China, Egypt, Jamaica, Lebanon, Malaysia, the Russian Federation, the Sudan, Thailand and the United Republic of Tanzania.

[4] Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

[5] Resolution S-23/2, annex and resolution S-23/3, annex.

[6] See *Official Records of the Economic and Social Council, 1984, Supplement No. 5* (E/1984/15-E/CN.6/1984/12).

[7] Ibid., *1997, Supplement No. 7* (E/1997/27-E/CN.6/1997/9), ibid., *1998, Supplement No. 7* (E/1998/27-E/CN.6/1998/12) and ibid., *1999, Supplement No. 7* (E/1999/27-E/CN.6/1999/10).

[8] Ibid., *2003, Supplement No. 7* (E/2003/27-E/CN.6/2003/12).

[9] Ibid., *1992, Supplement No. 4* (E/1992/214-E/CN.6/1992/13).

[10] E/CN.6/1991/10, para. 15.

[11] E/CN.6/Communications List No. 28. According to E/CN.6/1991/10 (para. 34) since 1984, the input from the specialized agencies has been negligible.

[12] E/CN.6/CR.2.

[13] E/CN.6/602, para. 10.

[14] E/CN.6/2003/SW/COMM.LIST/20.

[15] E/CN.6/2003/SW/COMM.LIST/19, para. 22.

[16] E/CN.6/2002/12, footnote 9.

[17] E/1997/27-E/CN.6/1997/9.